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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 4123 of 2007

PETITIONERS	1.	Smt. Saroj Sharma aged 48 years, w/o Shri Santosh Sharma
	2.	Narayan Prasad Sharma s/o Shri M.L. Sharma aged 58 years Both : r/o Sarjoo Bagicha Masanganj: Bilaspur
	Versus	
RESPONDENTS		Punjab National Bank through :
	1)	The Authorized Officer Punjab National Bank Zonal Office-CG Zone, Medical College Road, Raipur CG
	2)	The Manager, Punjab National Bank Sadar Bazar : Bilaspur CG

(Writ Petition under Article 226 of the Constitution of India)

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Present: Shri Anurag Dayal Shrivastava, counsel for the petitioners.

ORDER
(Passed on 16th July, 2007)

The petitioners are guarantors to the loan granted to Shri Yashwant Sharma, Smt. Pinki Sharma and Shri Sanjay Sharma by the respondent-Bank for purchase of jeep under the Scheme of Prime Minister's Rojgar Yajana. The petitioners gave a surety by creating equitable mortgage of plot No.21/03, Sheet No.29 and the building erected thereat in respect of said loans. Shri Yashwant Sharma, Smt. Pinki Sharma and Shri Sanjay Sharma failed to make payment of the loan amount to the respondent-Bank. The respondent-Bank by letter dated 09.09.2006 issued notice to the petitioners under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act, 2002') to ensure the payment of principal debt with interest to the tune of

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Rs.2,92,342/-. The petitioners replied to the notice through advocate which reads as under:-

> "1. My client is stated to have stood as guarantor of joint loans @ of Rs.1,00,000-00 each taken by Shri Yashwant Sharma, Smt. Pinki Sharma and Shri Sanjay Sharma for purchase of Jeep in Prime Minister's Rojgar Yojana : PMRY
>
> 2. The Vehicle : Jeep No. MP-26-E-9912 purchased out of the said amount is stated to have been Hypothecated with the Bank.
>
> 3. Plot No. 21/03 Sheet No.29 and building there-over situate at Masanganj, Sarjoo Bagicha, Bilaspur owned and possessed by my client is said to have been E/M in security of the said loans.
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> 4. My client has gathered that you no.1 has issued notices communicating your intention to proceed u/s 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 which apparently is not attracted in this transaction.
>
> 5. You are in well-know of the fact that security is not required in finances under Prime Minister Rojgar-Yojana even in Partnership Loans as is this case. A copy of the said scheme is enclosed for ready reference : Page-3 : Point -9 : security. The guarantee/security if obtained, therefore, is null-and void *ab-initio* and, therefore, it can not be acted upon under the said or any other Act.
>
> 6. My client is innocent and has delivered the title-deed/signed only to identify the borrowers. Neither she does mean to place the document under E/M nor the stated E/M is competent nor the Prime Minister Rojgar Yojana requires any security".

(2) In response, the respondent-Bank submitted that the guarantors are under the obligation to ensure the payment of debt amount with

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interest under the provisions of the Act, 2002. It was further stated that the amount of loan was more, that is why collateral security was insisted upon given by the petitioners.

3) Being aggrieved, the petitioners have filed this petition seeking following relief which reads as under:-

> "(1) calling for records from the Respondents relating to the subject matter of the Petition.
>
> (2) to declare that the Guarantee taken by Bank from the Petitioners is invalid and void-ab-initio
>
> (3) to direct the Respondent Bank not to take any action against the petitioners on the basis of stated incompetent Guarantee and return the title-deeds etc. of the land of the Petitioners which they have taken to create the stated equitable mortgage.
>
> (4) to quash the demand notice dated 09-09-2006 ANNEX-P/2 : and dated 27-06-2007 : ANNEX –P/5:".

4) Learned counsel appearing for the petitioners questions the amount and submits that the respondent-Bank is not correct in stating that the loan amount was more than the permissible limit therefore, collateral security was required. Learned counsel further relies on Clause 9 of the Prime Minister's Rojgar Yojana to the effect that no guarantee was required for loan amount up to Rs.1,00,000/-.

5) Be that as it may, it involves the disputed questions of facts which cannot be adjudicated upon in writ jurisdiction. Thus, the petition is dismissed as not maintainable. However, the petitioners are at liberty to take appropriate steps that may be available to them under civil jurisdiction.

Sd/-
Satish K.Agnihotri
Judge

Karuna